IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.7.2007

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

W.P.No.15384 of 2006
(O.A.No.1817 of 1995)

V.K. Kuppuraj ... Petitioner/Applicant

Vs

1. The Secretary,
Education Department,
Fort St.George,
Chennai - 600 009.

2. The Director of Collegiate Education,
College Road,
Madras - 600 006.
(Presently redesignated as
Commissioner of Collegiate Education,
College Road,
Madras - 6) ... Respondents/Respondents

This writ petition came to be numbered under Article 226 of Constitution of India, by way of transfer of O.A.No.1817 of 1995 from the file of the Tamil Nadu Administrative Tribunal with a prayer to call for the records relating to the order of the second respondent made in Na.Ka.No.025634.A1.86, dated 22.1.1994 and quash the same.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.V. Manoharan,
Government Advocate

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O R D E R

In this writ petition, petitioner seeks to quash the order of the second respondent dated 22.1.1994 imposing punishment of reduction in rank.

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2. The brief facts necessary for disposal of the writ petition are that the petitioner was appointed as Peon-cum-Driver in the Education Department on 11.7.1972 and he was posted as Driver-cum-Mechanic from September, 1982. When the petitioner was working as Driver to the second respondent herein, a charge memo was issued and he was placed under suspension on 18.3.1986. A criminal case was also registered against the petitioner under section 448 IPC read with Section 4(1)(j) of the Tamil Nadu Prohibition Act, in Cr.No.261 of 1986. The 8th Metropolitan Magistrate, Egmore, imposed a fine of Rs.500/- on the petitioner by order dated 17.3.1986 and he was released from the jail. Thereafter a charge memo was issued by the second respondent on 24.6.1986 containing six charges. Petitioner filed criminal appeal No.72 of 1986 before the 7th Additional Sessions Court, which was dismissed and thereafter he filed Crl.R.C.No.22 of 1988 before this Court and the said revision case was allowed on 13.2.1992. According to the petitioner, High Court ordered to reinstate the petitioner and the petitioner having not been reinstated, he filed O.A.No.2775 of 1992 before the Tamil Nadu Administrative Tribunal and the Tribunal on 16.6.1992 granted stay of suspension order dated 18.3.1986, which was also subsequently made absolute. The Tribunal ultimately granted liberty to the department to conduct enquiry and the petitioner was reinstated as driver in the second respondent office on 14.9.1992. Since the charges framed by the department were pending, petitioner was again placed under suspension by order dated 14.9.1992 and after enquiry the charges were held proved and thereafter petitioner was reverted from the post of driver and posted as Office Assistant. The suspension was also revoked and he was reinstated as Office Assistant. The said order of punishment is challenged in this writ petition.

3. Petitioner even though filed an appeal before the first respondent on 17.3.1994 and no order having been passed, the original order of reversion was challenged without awaiting for the orders to be passed by the appellate authority.

4. The second respondent has filed counter affidavit wherein it is stated that as action was initiated against the petitioner on the basis of the report of the Principal, Queen Marry's College, Chennai, and the Inspector of Police, D-5 Marina Police Station arrested the petitioner and kept him in jail for more than 48 hours, he was suspended under Rule 17(e) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, and 17(b) charges were framed under the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. The watchman attached to the Queen Marry's College, Chennai, was examined by the Enquiry Officer and all the procedures were rightly followed by the Enquiry Officer and charges having been proved, the order imposing punishment was passed and that there is no illegality in the said order.

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5. The learned counsel appearing for the petitioner submitted that the criminal Court having acquitted the petitioner as per the order passed in Crl.R.C.No.22 of 1988 on 13.2.1992, the respondents ought not to have conducted enquiry on the very same set of charges and imposed punishment of reduction to the lower post. The learned counsel further submitted that even assuming that the procedure followed by the respondents are permissible, the impugned order of punishment is contrary to Fundamental Rule 29 applicable to the Tamil Nadu Government Servants and submitted that as per the said rule, the order of reversion can be passed only for a specified period and not for ever. The impugned order having been passed in violation of the statutory rule viz., F.R.29, the same is to be set aside. The learned counsel further submitted that the petitioner was kept under suspension for about eight years and he is left with less than two years of remaining service and hence, to shorten the litigation, this Court can prescribe the period of reduction in rank so that the petitioner will get monetary benefit as he suffered the punishment for about 13 years and he can work in the higher post for some time.

6. The learned Government Advocate appearing for the respondents submitted that the charges levelled against the petitioner being serious and the petitioner was proceeded by following the principles of natural justice and also by following the procedures contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, and the behaviour of the petitioner being unbecoming of the Government servant, the reversion order was passed and the same need not be interfered with.

7. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents.

8. The main charge against the petitioner is that he trespassed into the Queen Mary's College and he was found in intoxicated mood on 16.3.1986. For the said main charge, a criminal case was registered under section 488 IPC and Section 4(1)(j) of the Tamil Nadu Prohibition Act, and he was finally acquitted by this Court.

9. Insofar as the submission made by the learned counsel appearing for the petitioner that the petitioner having been acquitted from the criminal case, no departmental proceeding should have been continued thereafter, cannot be sustained as proof required in a criminal case and that of in the departmental enquiry are different. Further, there is no bar to proceed against the Government Servant departmentally even if he is acquitted in the criminal case for the same set of charges.

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10. The said issue was considered by me in the decision reported in (2006) 2 MLJ 34 (M.K.Dange v. Chairman-cum-Managing Director, Oil and Natural Gas Corporation, New Delhi and others) wherein I have held as follows:

> "10. Issue No.1: It is not in dispute that even after the acquittal by the Criminal Court, the department has the right to continue with the disciplinary proceedings as held by the Honourable Supreme Court in the decision reported in AIR 2003 SC 1571 (C.M.D., United Commercial bank, v. P.C.Kakkar), wherein in paragraph 15 it is held as follows,
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> > "... Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."
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> 11. The Honourable Supreme Court in a very recent decision reported in JT 2006 (1) SC 444 = (2006) 1 M.L.J. 166 (S.C.) (Chairman-cum-M.D., T.N.C.S.Corpn. Ltd. & Ors. v. K.Meerabai) considered a similar issue as to whether departmental proceeding can be initiated or continued after the acquittal in the criminal case for the criminal charges. In paragraph 25, the Honourable Supreme Court held thus,
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> > "The scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law are quite distinct, exclusive and independent of each other. The prosecution proceedings launched against the respondent herein were in respect of offences punishable under Sections 409 and 477A IPC, whereas the departmental proceedings as initiated against her were in respect of the charges of misappropriation and other fraudulent practices such as deliberate omission to bring into accounts the stock received showing bogus issues in the records, falsification of accounts, submission of defective accounts, tampering of records, manipulation of accounts and records etc. Thus, the respondent herein was proceeded against for quite different charges and on different sets of facts before the court of

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Chief Judicial Magistrate, on the one hand, and before the departmental enquiry on the other."

In the said judgment it is further held that the High Court was wrong in setting aside the order of dismissal on the ground that the criminal Court acquitted the delinquent and in paragraph 24 held thus,

"The order of dismissal passed by the disciplinary authority was based on dispassionate and independent examination and appreciation of the entirety of facts and evidence on record relating to the malpractices and mis-appropriation indulged in by the respondent in collusion with the other members of the staff causing thereby huge loss to the Corporation."

In view of the above said decisions, it cannot be disputed that the respondents/Management are entitled to proceed with the departmental proceeding, in spite of the acquittal in the criminal case, more particularly, when the criminal Court acquitted the petitioner by giving benefit of doubt. At this juncture I feel it relevant to extract the findings of the criminal Court in paragraph 58 of its judgment, which reads as follows,

"... as rightly contended by the accused, the benefit of doubt emanating from the same should be extended in favour of the accused and accordingly the benefit of doubt emerging from the case is extended in favour of the accused. I hold therefore, that the prosecution has failed to establish the case against the accused beyond reasonable doubt and accordingly acquit the accused."

A reading of the above judgment makes it clear that the petitioner was not acquitted on merits and only on the basis of giving benefit of doubt."

Further, there are other charges also as could be seen from the impugned order. Hence, the respondents are justified in proceeding with the enquiry and the charges having been proved, the second respondent is also justified in punishing the petitioner.

11. However, as rightly contended by the learned counsel for the petitioner as per F.R.29, the order of reversion or reduction of an officer should be only for a specified period and it should also state that the said reversion/reduction in rank shall be effective from which date. For proper appreciation, FR29(2) is extracted hereunder:

"FR.29(2) Every order passed by a competent authority imposing on a Government Servant the penalty of reduction to a lower service, grade or post or to a lower stage in his time-scale should indicate;

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(i) The date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operative. It should be noted that a reduction to a lower service, grade or post or to a lower stage in his time-scale is also not permissible under the rules either for an unspecified period or as a permanent measure. It should only be for a specified period."

In the case on hand, the penalty period viz., reversion of the petitioner's service from the post of driver to Office Assistant is not mentioned. Hence there is statutory violation while passing the impugned order of reversion against the petitioner.

12. This court in the decision reported in (2006) 4 MLJ 1335 (S.V.Mahalingam v. Collector, Pasumpon Muthuramalinga Thevar District) considered similar issue and held that not following FR.29(2) by the Disciplinary Authority while passing the order of reversion, cannot be sustained.

13. In the decision of the Honourable Supreme Court reported in (1991) 1 SCC 544 (A.K.Bhatnagar v. Union of India) it is held that when a statutory rule is framed under Article 309 of the Constitution of India, the same should be strictly followed. In paragraph 13 the Honourable Supreme Court held thus,

"13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. there shall be no order as to costs."

The same view was taken by the Honourable Supreme Court in the subsequent decision reported in (1999) 3 SCC 422 (Babu Verghese v. Bar Council of Kerala), wherein in paragraph 31 it is held thus,

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor ((1875) 1 Ch D 426) which was followed by Lord Roche in Nazir

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Ahmad v. King Emperor (AIR 1936 PC 253), who stated as under:

> "(W)here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

14. In this case, the petitioner is now aged 56 years and he is having about two more years of service. The petitioner was suspended from 18.3.1986 to 22.1.1994 and he is serving in the reverted post from 1994 onwards. Hence to shorten the litigation and in view of the fact that the first respondent is not empowered to pass reduction in rank indefinitely as per FR.29(2), I am of the view that the reduction in rank can be restricted for a period of three years from 22.1.1994 and the petitioner shall be restored as driver with monetary and other service benefits from 21.1.1997. It is made clear that this Court is inclined to pass this order only due to the failure on the part of the respondent in not following the statutory provision contained in FR.29(2) as extracted above. The difference in pay from 22.1.1997 shall be calculated and paid to the petitioner within six weeks from the date of the receipt of copy of this order.

The writ petition is partly allowed with the above direction. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vr

To

1. The Secretary, Education Department,
   Fort St.George, Chennai - 600 009.

2. The Director of Collegiate Education,
   College Road, Madras - 600 006.
   (Presently redesignated as
   The Commissioner of Collegiate Education,
   College Road, Madras - 6)

1 cc To The Government Pleader, SR.46747.

W.P.No.15384 of 2006

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